IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

:: J U D G M E N T ::

D.B. CRIMINAL JAIL APPEAL NO.1047/2002
(Ramesh Chandra Vs. The State of Rajasthan)

D.B. CRIMINAL JAIL APPEAL UNDER SECTION 383 Cr.P.C. AGAINST THE JUDGMENT DATED 14th NOVEMBER, 2002 PASSED BY THE LEARNED SPECIAL JUDGE, SC/ST (PREVENTION OF ATRICITIES) CASES, UDAIPUR IN SESSIONS CASE NO.85/2000 - STATE VS RAMESH CHANDRA.

DATE OF JUDGMENT : 14th FEBRUARY, 2007

P R E S E N T

HON'BLE MR. JUSTICE N.N.MATHUR
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Niranjan Singh, Amicus Curiae for the appellant.
Mr. JPS Choudhary, Public Prosecutor.

BY THE COURT : (PER HON'BLE MR. MATHUR,J.)

1. The appellant Ramesh Chandra was put to trial for the charge of murder of his own father Keshu Lal. The learned Special Judge, SC/ST (Prevention of Atrocities) Cases, Udaipur by judgment dated 14.11.2002 having found the charges proved, convicted the appellant of offence under Section 302 IPC and sentenced him to imprisonment for life and to pay a fine of Rs.1000/-, in default of payment of fine to further undergo one

month's simple imprisonment.

2. The prosecution case as disclosed during the trial is that on 7.8.2000, a telephonic message was received from an unanimous person at Police Station Gogunda at about 11.30 a.m. to the effect that Ramesh Chandra Joshi has killed his father Keshu Lal Joshi. Receiving the information, PW-11 Kundan Singh reached on the spot, where PW-2 Shyam Lal gave him an oral report stating inter alia that at about 9 a.m., he reached at a place known as Mahudi for grazing cattle. Deceased Keshu Lal with a tiffin and kulhari also arrived. On usual interaction, he expressed that he would not be cutting timber but collect some sticks for fuel. After about half an hour, he along with cattle reached near the tamarind tree. He found appellant Ramesh Chandra near the tamarind tree. He was carrying kulhari in his hand. He could see the edges of the kulhari stained with blood. On enquiry, he exclaimed that he would do or die. He also stated that he was going to the Police Station. Appellant Ramesh Chandra proceeded towards village Palasama. He found the conduct of appellant unusual. However, when he reached near the tamarind tree, he found Keshu Lal lying injured. He was fluttering. There was profused bleeding from the injuries on his body. At that time, PW-4 Chaman Lal and PW-13 Ganesh Lal who were also grazing cattle in the field arrived. They arranged

a jeep for taking Keshu Lal to the hospital at Udaipur. Keshu Lal succumbed to the injuries on the way at about 10.30 a.m. On this information, police registered a case of offence under Section 302 IPC and proceeded with the investigation.

3. The appellant pleaded not guilty of the charges levelled against him and claimed trial. The prosecution in support of its case adduced oral and documentary evidence. The appellant in his statement under Section 313 Cr.P.C. denied the correctness of the prosecution evidence appearing against him. The learned trial court having found the prosecution case proved, convicted and sentenced the appellant in the manner stated above.

4. With the assistance of the learned counsel for the parties, we have perused and critically scrutinized the evidence on record. In the absence of ocular evidence, the case rests on circumstantial evidence. The prosecution has relied upon following piece of circumstances:-

(1) The appellant was seen near the dead body with a blood stained kulhari;

(2) Extra Judicial Confession of the appellant before PW-3 Bhanwari Bai;

(3) Recovery of blood stained kulhari;

(4) Presence of human blood on the shirt of the appellant.

5. The law relating to the circumstantial evidence has been stated by the Court in numerous decisions. It is needless to refer them as the law on the point is well settled. Before we proceed to deal with each piece of circumstances, it may be stated that the learned counsel for the appellant has not disputed the fact that deceased met with the homicidal death. PW-14 Dr. Ramavatar Saini conducted autopsy on the dead body of Keshu Lal vide Ex.P-22. He noticed the following injuries on his person:-

1. Incised (chop) wound on left side of face extending from;- below left eye to occipital region 13 cm x 3 x 6 cm.

2. Incised wound 2 x ½ cm Rt. Frontal region.

3. Incised – 2 x 2 cm at Rt eye eye brow.

4. Incised 3 x 1 x 1 cm below injury no. 1 horizontal.

5. Incised w. 3 x 1 x ½ on chin left side.

6. Abrasion 4 x 2 cm left shoulder post side.

In his opinion, the cause of death was head injury –

sudden brain death and hypothetemic shock due to excessive blood from neck vessels on left side.

6. As far as the first circumstance is concerned, the prosecution in order to establish the same has produced PW-2 Shyam Lal, PW-4 Chaman Lal, PW-13 Ganesh Lal and PW-5 Sohan Lal. The First Information Report has been registered on the basis of the statement of PW-2 Shyam Lal. He has reiterated the same before the court. Thus, we do not consider it expedient to restate his statement. Suffice it to say that nothing has been elicited to discredit the testimony of this witness. PW-4 Chaman Lal has not supported the prosecution case, as such, he was declared hostile. PW-13 Ganesh Lal stated that he had gone to the field for grazing cattle. On the way, he met with Ramesh. On seeing him, Ramesh tried to conceal himself. He proceeded to a distance and found deceased Keshu Lal fluttering under the tamarind tree. A jeep was arranged to send him to the hospital. PW-5 Sohan Lal is the younger brother of the deceased Keshu Lal. He has stated that on the date of incident, he had gone to Gogunda. While he was returning in the jeep, he came to know about the incident. He was told that his brother Keshu Lal was being killed by his nephew Ramesh. The incident was narrated to him by PW-2 Shyam Lal. Thus, from the statement of PW-2 Shyam Lal, it is evident that appellant Ramesh Chandra was

seen near the dead body of deceased Keshu Lal armed with kulhari, stained with human blood. The prosecution has succeeded in establishing this piece of circumstance, which is of conclusive nature.

7. As regards the second piece of circumstance, PW-3 Bhanwari Bai, who is the wife of deceased and mother of appellant has stated that appellant Ramesh Chandra left the house at about 7.00 a.m. for grazing the cattle. Her husband Keshu Lal also left the house at about 8.00 a.m. for grazing the cattle. At about 9.00 a.m., his son returned to the house. He stated that he had killed her husband. She questioned him for the conduct, on which he retorted that he was being assaulted by his father, thus, he has settled the score with him. Appellant Ramesh Chandra was carrying a blood stained kulhari with him. She also stated that there were blood stains on the clothes of appellant Ramesh Chandra. There is a lengthy cross examination entirely concentrated on the object of the appellant for committing the murder of her husband. She has not been able to give any specific reasons for the murder. As far as the law for extra judicial confession is concerned, it is well settled that there has to be consistency in the statement with respect to exactly the words uttered by the accused. Ordinarily, it is a matter of prudence and ordinary course of human conduct, that a person

is attempted to make extra judicial confession to a person in which he reposed confidence or hold some authority to convince himself that he will be helpful instrument to save him. In the instant case, the exact words in which the extra judicial confession is said to have been made are extracted as follows:-

> "रमेश ने मुझे कहा था। कि तेरे पति के मैं गटटे करके आया हूं।मैंने रमेश से कहा था कि ऐ रागस तेने ऐसा क्यों किया मेरे पति को क्यों मारा था। रमेश के पास खून से भरी हुई कुल्हाड़ी थी। रमेश के शरीर पर पेन्ट और बुशर्ट पहने हुये थे। पेन्ट बुशर्ट पर खून के लाल धब्बे लग रहे थे।"

8. On careful consideration of the entire matter, we are of the view that the prosecution has succeed in establishing the second piece of circumstance as well , which is of conclusive nature.

9. As regards the third piece of circumstance, it is stated by PW-11 Kundan Singh Jhala that the appellant while in custody gave an information vide Ex.P-21 relating to the recovery of blood stained kulhari vide Ex.P-8. The kulhari was sealed and packed in the presence of motbirs on the spot. It was sent to the FSL. It is not necessary to deal with the link evidence as the same has not been challenged. As per the FSL, the kulhari was found to be stained with human blood of 'B' group. It may be

stated that the clothes of the deceased were also seized by Ex.P-4. They were also sent to the FSL for analysis. As per the FSL report, the blood group on the clothes of the deceased as well as on the kulhari were of the same group. The appellant has failed to give any explanation as to the presence of human blood on the kulhari recovered from his possession. Thus, the prosecution has succeed in establishing the third piece of circumstance as well, which is of conclusive nature.

10. As regards the fourth piece of circumstance, the appellant was found wearing shirt stained with blood at the time of arrest. The said shirt was recovered vide Ex.P-7. It was sealed and packed on the spot. It was sent to the FSL. As per the FSL report, the blood stains on the shirt were found to be of human origin. On grouping, the blood stains on the shirt were found to be of 'B' group. It may be stated that the blood stains found on the clothes of the deceased as well as on the kulhari were also of the same group i.e. 'B' group.

11. Thus, taking into consideration all the circumstances together, it forms a link leading to the irresistible conclusion that it could be none else but appellant Ramesh Chandra who committed the murder of his father Keshu Lal. The learned trial court has rightly convicted and sentenced the appellant on the

charge of murder of his father Keshu Lal. No interference is warranted by this Court with the judgment of the learned trial court.

12. Consequently, the appeal being devoid of merit stands dismissed. Appellant Ramesh Chandra is in jail. He will serve out the remaining part of the sentence.

(GOPAL KRISHAN VYAS), J. **(N.N.MATHUR), J.**

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